IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.MC.No. 2986 of 2007()

AGAINST THE ORDER DATED 19/05/2007 IN MP.370/05 IN CC.718/2003 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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PETITIONER: CLAIM PETITIONER

REJI, S/O. THANKAPPAN,
KATTIL HOUSE, SOUTH VAZHAKULAM.

BY ADV. SRI.K.SUNILKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON 29/11/2007 PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 2986 OF 2007

Dated this the 29th day of November, 2007

O R D E R

The petitioner is the de facto complainant in a prosecution for offences punishable under sections 457, 461 and 380 read with 34 IPC. In the said prosecution before JFCM, Perumbavoor – C.C.No.718/03, the petitioner was examined as PW1. There were three accused persons. They were found not guilty and acquitted as per judgment dated 8.4.05. In the said judgment, I do note that there is a direction that Mos 1 and 2, gold ingots, shall be confiscated.

2. The petitioner should normally had preferred an appeal under section 454 Cr.P.C. against the direction under section 462 Cr.P.C. to confiscate MOs 1 and 2. The petitioner, obviously, did not file any such appeal.

3. It is seen that an application filed on 28.1.05 by the petitioner for return of article which was pending before the learned Magistrate as M.P.370/05 was disposed of later as per Annexure-A2 order. The prayer of the petitioner was rejected.

The petitioner has come to this court to challenge Annexure-A2 order in this Crl.M.C.

4. Considering the two separate directions regarding the disposal of MOs 1 and 2, the reports of the learned Magistrate were called for. The learned Magistrate has reported now that MP.370/05 was disposed of not on 19.5.07 but on 19.5.05. In the cause title the name of the officer who disposed of MP.370/05 was also wrongly shown, it was reported.

5. Be that as it may, it now appears that there are two directions regarding disposal of MOs 1 and 2. One in the judgment in C.C.718/03 and the other in MP.370/05. No steps for confiscation has so far been taken. When this petition was admitted, there was a direction on 29.10.07 that MOs 1 and 2 shall not be confiscated until further orders.

6. To put an end to this controversy, I am satisfied that the petitioner can be given a further opportunity to file a fresh application for disposal of MOs 1 and 2 under section 452 Cr.P.C. The learned Magistrate shall pass appropriate orders, after hearing all concerned and after permitting the parties to adduce further evidence, if any, necessary. Appropriate orders shall be

passed as expeditiously as possible by the learned Magistrate.

7. To facilitate such disposal, it is directed that the direction of disposal of MOs 1 and 2 in the judgment dated 8.4.05 in C.C.718/03 and the order dated 19.5.05 in MP.370/05 shall stand set aside. Such fresh application must be filed by the petitioner before the learned Magistrate within a period of one month from today.

8. Issue copy to the learned counsel for the petitioner forthwith.

(R.BASANT, JUDGE)

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